

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(BOSTON)

WEN Y. CHIANG,

Plaintiff,

v.

BANK OF AMERICA, MBNA
AMERICA BANK, and FIA CARD
SERVICES, N.A.,
Defendants.

NO. 08-11908-RWZ

**DECLARATION OF PETER SWEENEY IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

I, Peter Sweeney, hereby declare as follows:

1. I am an Assistant Vice President with Bank of America, N.A. ("BANA"). I submit this declaration in support of BANA's and defendant FIA Card Services, N.A.'s Motion for Summary Judgment. I have personal knowledge of all the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have been an employee of BANA since January 2, 2001 and have been an Assistant Vice President in the Home Equity Underwriting and Fulfillment department since April 16, 2010. My job responsibilities include, among other tasks, management of closings for the department. I am familiar with both BANA's and FIA's policies and procedures, and document retention practices for their various account records and files. In my position, I have access to both BANA's and FIA's historical records for all deposit and credit card accounts maintained by either FIA or BANA.

3. **Wen Y. Chiang's VISA Account:** I have reviewed FIA's records for Wen Y. Chiang's VISA account ending in 7198 ("VISA account"), including written correspondence relating to this, and I have made myself familiar with the VISA account records and information. Mr. Chiang's VISA account was opened on November 21, 2005 with a credit limit of \$3,500. The VISA account was originally opened with Bank of America, N.A. (USA) and assigned an account number ending in 6419. On January 1, 2006, Bank of America Corporation and MBNA Corporation merged, and in June 2006, MBNA's subsidiary which issued credit cards—MBNA American Bank, N.A.—was renamed FIA Card Services, N.A. In October 2006, Bank of America, N.A. (USA) merged into FIA. When Mr. Chiang's VISA credit card expired in late 2008, the VISA account was reassigned a new number (ending in 1736), in part because FIA, the successor entity to Bank of America, N.A. (USA) now maintained the account. The account was again assigned a new number (ending in 7198) in September 2009 when the account was charged-off as a result of Mr. Chiang's maintaining the account in default status.

4. I understand that BANA is a named defendant in this action. However, BANA does not maintain the VISA account, and has never maintained it or had any responsibility for the account or any credit reporting relating to this account. As explained above, the VISA account was originally opened by Bank of America, N.A. (USA), which was a separate and completely different legal entity than BANA, and which merged into FIA a number of years before the events at issue in this lawsuit.

5. Attached hereto as Exhibit A are true and correct copies of monthly account statements for Mr. Chiang's VISA account from January 2008 through September 2009 when the account was charged-off. These documents came from FIA's records, to which I have access,

for the VISA account. As the 2009 account statements reflect, Mr. Chiang's last payment of \$200 on his VISA account posted on January 13, 2009. Mr. Chiang inexplicably stopped making any payments on his VISA account thereafter, even though at the time he had maintained a balance of over \$3,000 on his account. Mr. Chiang has not made any payments on his VISA account since January 13, 2009.

6. Attached hereto as Exhibit B are true and correct copies of various correspondence between FIA (or its predecessor) and Mr. Chiang relating to the VISA account. These documents came from FIA's records for the VISA account.

7. **Wen Y. Chiang's Checking Account:** As explained, in my position, I also have access to information for checking accounts maintained by BANA, including Mr. Chiang's checking account ending in 9778 (the "Checking Account"). I have made myself familiar with the account records and information for the Checking Account. Mr. Chiang's Checking Account was opened on May 15, 2008. Attached hereto as Exhibit C is a true and correct copy of the signature card for the Checking Account that was signed by Mr. Chiang when he opened the account. This document came from BANA's records for the Checking Account.

8. In conjunction with the opening of his Checking Account, Mr. Chiang also signed an Overdraft Protection Authorization form, authorizing BANA to debit Mr. Chiang's VISA account ending in 6419 (subsequently reassigned number 7198), as necessary to cover checks or items drawn on the Checking Account if payment of those checks or items would cause his Checking Account to be overdrawn. Attached hereto as Exhibit D is a true and correct copy of the Overdraft Protection Authorization form signed by Mr. Chiang. This document came from BANA's records for the Checking Account.

9. Attached hereto as Exhibit E are true and correct copies of select monthly account statements for Mr. Chiang's Checking Account.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct. Executed August 12, 2010, in Farmington, CT.

/s/ Peter Sweeney
Peter Sweeney